

Settlement Date: September 3rd, 2015
Time: 12:00 Noon

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13
Case No. 15-11470 JLG

GINO J. HERNANDEZ,

NOTICE OF SETTLEMENT

Debtor(s)

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FAILURE TO RESPOND MAY LEAD TO A DISMISSAL OF YOUR CASE

PLEASE TAKE NOTICE, that an *Order*, a true copy of which is annexed hereto, will be presented for signature to the Hon. James L. Garrity, Jr., United States Bankruptcy Judge, on the 3rd day of September, 2015 at 12:00 Noon at the United States Bankruptcy Court, U.S. Customs House, One Bowling Green, New York, New York 10004.

Hearings on objections will be scheduled upon the receipt of written objections or counterorders to be submitted to chambers by no later than close of business on the business day prior to settlement.

OBJECTIONS TO PROPOSED ORDER:

All objections to a proposed order **MUST HAVE** the settlement date of the original notice typed or written on the first page in the upper right-hand corner of the document.

COUNTER-PROPOSED ORDERS:

All counter-proposed orders should be clearly denominated as such, with the

return date of the original proposed order in the upper right-hand corner of the first page. A copy of the transcript, if a hearing was held, must be submitted with the counter-proposed order.

Dated: White Plains, New York
August 12th, 2015

/s/ Jeffrey L. Sapir
Jeffrey L. Sapir (JLS0938)
Chapter 13 Trustee
399 Knollwood Road
White Plains, New York 10603
Chapter 13 Tel. No. 914-328-6333

TO: United States Trustee
201 Varick Street # 1006
New York, New York 10014

Gino J. Hernandez
6218 Madison Street
West New York, New Jersey 07093

Daniel M. O'Hara, Esq.
The Law Firm of Daniel M. O'Hara, PLLC
250 Park Avenue 7th Floor
New York, New York 10177

NYS Department of Taxation & Finance
Bankruptcy Section
P.O. Box 5300
Albany, New York 12205

Warshaw Burstein, LLP
555 Fifth Avenue
New York, New York 10017

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13

Case No. 15-11470 JLG

GINO J. HERNANDEZ,

Debtor

----- -x

ORDER DISMISSING CHAPTER 13 CASE

The Court finds that cause exists to dismiss this case under

11 U.S.C. §1307(c)(1) in that the debtor has caused unreasonable delay that is prejudicial to creditors.

The Court further finds that cause exists to dismiss this case under

11 U.S.C. §1307(c)(4) in that the debtor has failed to remit timely plan payments to the Chapter 13 trustee as required by 11 U.S.C. §1326;

The Court further finds that the debtor has failed to comply with

11 U.S.C. §521(i) by failing to timely file documents as required under 11 U.S.C. §521(a)(1);

The Court further finds that the debtor failed to comply with

11 U.S.C. §521(e)(2)(A)(i) in that the debtor failed to provide the trustee with copies of federal and state tax returns for the most recent tax years preceding the commencement of the case, within seven (7) days prior to the meeting of creditors scheduled pursuant to 11 U.S.C. §341(a).

The Court further finds that cause exists to dismiss this case under

11 U.S.C. §109(e) on the ground that the debtor's listed unsecured debt exceeds the \$383,175.00 limitation.

IT IS HEREBY ORDERED THAT:

Pursuant to 11 U.S.C. §1307(c)(1), (c)(4) and §521(i) and §521(e)(2)(B), and
§109(e) this Chapter 13 case is hereby dismissed.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13
Case No. 15-11470 JLG

GINO J. HERNANDEZ,

TRUSTEE'S AFFIDAVIT

Debtor(s)

-----X

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

Jeffrey L. Sapir, being duly sworn, deposes and says:

1. He is the standing Chapter 13 Trustee.
2. The debtor filed a Chapter 13 proceeding on June 2nd, 2015.
3. The debtor failed to comply with the provisions of 11 U.S.C. §1307(c)(1) and (c)(4).
4. The debtor is in violation of 11 U.S.C. §521(i) of the Bankruptcy Code which requires the debtor to file payment advices and evidence of other payments received within 60 days. .
5. The debtor is in violation of §521(e)(2)(A)(i) of the Bankruptcy Code which requires the debtor to provide *seven (7) days prior to the §341(a) meeting of creditors* ,copies of federal and state tax returns for the most recent tax years preceding the commencement of the case, to wit, 2012, 2013 and 2014.
6. Upon examination of the debtor, the trustee was informed that the debtor has failed to file tax returns for several years nor does he keep business records.
7. The debtor failed to remit timely proposed plan payments to the trustee, having remitted -0- payments, and being, at this juncture, two months in arrears.

8. The debtor fails to qualify under Chapter 13 on the ground that the debtor's claimed unsecured debt of \$414,315.47 exceeds the \$383,175.00 limitation under the parameters of Chapter 13.

9. Further, the debtor is not a resident of New York State.

10. The delay created by the debtor is prejudicial to creditors. .

WHEREFORE, the trustee respectfully requests that the annexed order dismissing this case pursuant to 11 U.S.C. §1307(c)(1), (c)(4) and §521(i) and §521(e)(2)(B), and §109(e), be signed,

/s/ Jeffrey L. Sapir
Jeffrey L. Sapir

Sworn to before me this
12th day of August, 2015
/s/ Jody L. Kava

Jody L. Kava
Notary Public, State of New York
No. 02KA4836806
Qualified in Westchester County
Term Expires: 10/31/17

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X

IN RE:

Chapter 13
Case No. 15-11470 JLG

GINO J. HERNANDEZ,

Debtor

----- -X

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

Lois Rosemarie Esposito, being duly sworn, deposes and says:

I am not a party to the action herein, I am over the age of 18 years and reside in the County of Westchester, State of New York. On August 12th, 2015, I served a true copy of the within document, to the herein listed parties at the address(es) designated for that purpose, by mailing same in a properly sealed envelope with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York to the following:

TO:: United States Trustee
201 Varick Street # 1006
New York, New York 10014

Gino J. Hernandez
6218 Madison Street
West New York, New Jersey 07093

Daniel M. O'Hara, Esq.
The Law Firm of Daniel M. O'Hara, PLLC
250 Park Avenue 7th Floor
New York, New York 10177

NYS Department of Taxation & Finance
Bankruptcy Section
P.O. Box 5300
Albany, New York 12205

Warshaw Burstein, LLP
555 Fifth Avenue
New York, New York 10017

/s/ Lois Rosemarie Esposito
Lois Rosemarie Esposito

Sworn to before me this
12th day of August, 2015
/s/ Jeffrey L. Sapir
Jeffrey L. Sapir
Notary Public, State of New York
No. 02SA8764500
Qualified in Rockland County
Term Expires: 12/31/16